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HUMAN RIGHTS COMMITTEE TAKES UP REPORT OF BELGIUM

Members Raise Concerns about Minorities' Rights, Women's Status, Prostitution, Restrictions on Foreign Residents

Foreigners could be excluded from residing in certain Belgian communes because a concentration of them could promote racist reactions, the representative of Belgium told the Human Rights Committee this morning as it began consideration of that country's report.

Claude Debrulle, Administrative Director at the Ministry of Justice of Belgium, explained that the King was authorized to forbid certain categories of foreigners -- with the exception of nationals from the European Economic Community (EEC) countries -- from residing or taking up residence in a given commune if a population increase there would jeopardize the public interest. Many of the relevant decrees would, however, expire next May, while others were under review.

He also reviewed the recent process of devolving federalism in Belgium, saying that the four major difficulties to be overcome were a centrifugal federal system, a bipolar national structure, different legal systems and financial difficulties created by the need for both national solidarity and regional autonomy.

The report -- Belgium's second on its compliance with the International Covenant on Civil and Political Rights -- was introduced by the Permanent Representative of Belgium to the United Nations.

Experts from the Committee asked for more details on the limitations placed on foreigners and on the rights of minorities within the two majority Communities. They also raised questions about the direct applicability of the Covenant in Belgian law and about gender equality and prostitution.

Statements were made by the experts from France, Austria, Jordan, Ecuador, Nicaragua, the Russian Federation, Sweden, Egypt and Senegal.

When the Committee meets again at 3 p.m. today, it will continue its examination of the Belgium report.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this morning to consider the second periodic report of Belgium (document CCPR/C/57/Add.3) on its implementation of the International Covenant on Civil and Political Rights.

The Committee of 18 experts will examine rights of detainees, the status of the death penalty and the use of firearms by the police and security forces. In related judicial issues, it will take up procedures for appointment and removal of members of the judiciary, the legal aid system, and restrictions on freedom of expression and association.

Other areas of inquiry for the Committee will include the rights of aliens, minorities and migrant workers. Employment of minors and custody of children in a divorce will be considered in matters relating to the protection of the family and child. The status of opportunity for women will also be questioned.

Report of Belgium

The second periodic report of Belgium deals with Government measures implementing the rights recognized in the Covenant and the progress achieved since the first report presented to the Committee in 1988. The Covenant was approved by the Belgian Parliament on 15 May 1981.

The report states that the provisions of the Covenant formed part of international law and were binding. The Covenant did not, however, determine specifically whether its provisions were directly applicable. Direct applicability was a matter to be settled by the Court. The Court of Cassation of Belgium in a decision of 17 January 1984 had affirmed that article 9, paragraph 2, dealing with the rights of the accused, directly affected internal law for individuals. Since then, the Court of Cassation had confirmed such direct applicability in the case of other provisions of the Covenant.

The unusual evolution of the Belgian Constitution created unique challenges for the Government, according to the report. Since the creation of the Constitution in 1831, the Government had been a democratic State ruled by law and based on a flexible separation of powers, like a parliamentary monarchy and a unitary decentralized state. Legislation passed since 1932 had divided the country into four linguistic regions. The Constitution in 1970 set out an arrangement of three monolingual regions (French, Dutch and German) and the bilingual Brussels-Capital region (French and Dutch). Three "Cultural Communities" (French, Dutch and German) were recognized in the 1970 Constitution, each with its own institutions. Cultural and educational autonomy were given to the Communities in subsequent constitutional revisions in 1980 and 1988.

The report states that those Communities had jurisdiction over cultural matters, education and the use of languages for administration and business relations, The Regions had jurisdiction over land development, the

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environment, housing, water policy, energy policy, employment policy, public works and transport.

A Court of Arbitration was established in 1980 to mediate the jurisdictional conflicts that arose in the Communities and Regions. It decided that the "implicit powers" of the Communities and Regions did not extend to the regulation of basic rights and freedoms which were reserved in the Constitution for the national legislature. It had also ruled that the new structure of the Belgian State was rooted in economic and monetary union.

In specific areas of constitutional reform, the report states that in 1988 the legislature clarified principles concerning the protection of young persons. It ensured that protection, including social and legal protection, came within the competence of the individual Flemish, French and German-language Communities. Exceptions to those powers were delineated in rules of civil law relating to the status of minors and the family; organization and jurisdiction of juvenile courts; determination of measures that could be taken against minors; and loss of parental authority. The Office for the Protection of Young Persons had been split up and the staff transferred to the relevant ministries of the Communities.

One controversial portion of the Protection of Young Persons Act of 1988 had involved the provision allowing temporary imprisonment of a minor in a gaol, if other facilities were not available. The European Court of Human Rights had ruled against Belgium on that provision in 1988. Since then, courts were trying to avoid applying the provision. The lack of proper facilities in the French Community still had resulted in certain continued instances of the practice. The Community was currently endeavouring to rectify those deficiencies.

Although the death penalty was still contained in the Belgian Penal Code no one, according to the report, had been executed since 1918. The death penalty was no longer enforced. Belgium should be included among the States whose practice tended towards abolition of the penalty.

Changes in the prison system had occurred. Regulations governing consignement to a "punishment cell" had been amended. New provisions would authorize free communication between accused persons and legal counsel. A pending bill in Parliament would guarantee a greater respect for the freedom of the individual, particularly in regard to arrest and custody in pre-trial detention.

The report refers to a Royal Decree of 7 May 1985, prohibiting certain aliens from residing or establishing themselves in some communes in the greater Brussels area. An appeal to annul that Decree was still pending before the Council of State. Regarding political refugees, the Office of the Commissioner General for Refugees and Stateless Persons was created in 1987 to deal with all requests for recognition of political refugee status. Applicants may appeal at various stages of the procedure against any decisions unfavourable to them. Pending a final decision by the Office of the Commissioner General, applicants for refugee status received at Zaventem

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national airport were housed in a centre which could accommodate 28 persons. The centre was always full.

Belgium had taken steps in law, the report confirmed, to rule out all forms of discrimination in employment. The Act of 4 August 1978 had provided for measures to promote equal opportunity between men and women and remove de facto inequalities which stood in the way of opportunities for women. A Royal Decree was issued on 14 July 1987 concerning measures to promote equal opportunity in the private sector. Another Decree concerning the public sector had been approved by the Council of Ministers and trade union organizations.

Although political equality of the sexes existed in Belgium, women were underrepresented at all levels of government. The Minister for Social Emancipation had developed a new policy to encourage participation of women in politics.

The report states that the devolutionary trend of federalism in Belgium had marked a departure from the usual federal practice of seeking unity through the amalgamation of previously sovereign entities. By contrast, Belgian federalism enumerated the powers of the federal entities, while residual power was left in the hands of the national authorities. Belgium had progressively turned into a federal State since the setting up of the Communities and Regions.

Introduction of Belgium's Report

PAUL NOTERDAEME (Belgium), introducing his Government's second periodic report, said it was intended to answer questions that had been raised concerning Belgium's initial report, submitted in 1988.

CLAUDE DEBRULLE, Administrative Director of the Ministry of Justice of Belgium, said that important spheres of competence had been given back to the Communities of Belgium since the first report in 1988. He also stated that the report was the first to be submitted that strictly followed the guidelines of the Committee.

Constitutional and Legal Framework

Mr. DEBRULLE (Belgium) said the rights in the Covenant had to be transformed by specific law in Belgium to be directly applicable to individuals. He noted the precedent-setting rulings by the Court of Cassation that applied specific articles of the Covenant to Belgian law.

International treaties, he said, were mandatory and binding in national law and had primacy in the various Communities and Regions. They were required to respect those portions of international treaties that were directly applicable.

He reviewed the process of federalism that had been evolving in Belgium since 1970. Four major difficulties had to be overcome -- a centrifugal

federal system, a bipolar national structure, different legal systems and a financial balance of national versus regional needs.

Belgian federalism was centrifugal in its devolution of federal power, he said. The Flemish Movement had initially sought the recognition of its own culture. That initiative had led to the regional and community structure that had emerged in the past 20 years. The law had evolved into a kind of equivalency between the federal government and the autonomous powers of the Regions and Communities. The country had become essentially bipolar with the emergence of two dominant linguistic communities --the Flemish and the French. That bipolarity had resulted in certain protection measures on the federal level to protect the French-speaking minority.

Different legal systems in the northern and southern parts of the country, he said, had resulted in delicate negotiations to establish norms of cultural autonomy in each of the Communities.

The needs for both national solidarity and regional autonomy had created financial difficulties, he said. The economic and monetary union of the country and the social security system were areas of common cooperation among the Communities. The budgets of the Communities and Regions had their own sources and were supplemented by the federal budget to equalize services. The poorest Regions were the recipient of federal aid. Education was funded at a national level.

Non-Discrimination, Equality of Sexes

Responding to questions about non-discrimination and equality of the sexes, Mr. DEBRULLE (Belgium) said women's participation had been encouraged in politics and trade unions. Opinions differed as to whether there should be a minimum quota of women in certain professions. One fifth of Government ministers were now women, but the women's movement felt the situation could still be improved.

Inequality persisted, however, with regard to wages and access to jobs, he continued. A new law sought to promote equal opportunity and measures were under way to redress the inequalities ensuing from traditional male dominance. While in some professions women represented 78 per cent of all workers, they occupied only 14 per cent of the higher echelons in other categories.

He said efforts were being made to recruit more women for those posts. Among other positive steps being envisaged in both the public and private sectors were recruitment procedures, a review of selection criteria, training women for non-traditional jobs, child care facilities and paternal leave.

The Constitution provided that foreigners who were regularly on Belgian soil enjoyed the same public, economic and social freedoms and Constitutional guarantees of the exercise of individual liberties as Belgian citizens, he continued. When the political activities of foreigners impinged on public order, however, the foreigners could be expelled. There were also

restrictions on their freedom to enter and leave the country: the king was authorized to forbid certain categories of foreigners from residing or taking up residence in a given commune if a population increase there would jeopardize the public interest.

He said that while foreigners did not have the right to vote or to be elected, nationals from the European Economic Community (EEC) countries were treated in a relatively open way. As to the difficulties encountered by migrant workers in Belgium, he said there was an urgent need to integrate the young immigrants who were born in Belgium as of 1974, when it closed its borders to massive immigration. In 1979 the Government had set up a royal commission to deal with immigration policies and propose measures to deal with the problems of immigrants, with priority accorded to employment, housing and education.

The idea of full integration, he went on, was based on the concepts of assimilation, where required by public order; emancipation; and respect for cultural and religious diversity. It was intended to achieve reciprocal acceptance between and among the majority and the minorities, but such acceptance was difficult to put into practice if the latter were not structurally involved in the activities of the dominant group.

As of 1 January, he said, new laws had come into force, giving Belgian nationality to foreigners less than 18 years old who had been born in Belgium of a foreign parent. Children whose parents had resided in the country for at least 10 years could request Belgian nationality while they were between the ages of 18 and 29.

Language courses were offered to foreigners, he said, as was access to contractual jobs. Problem housing areas had been surveyed, and subsidies and incentives were provided for integrated development projects and to restore deteriorated housing. The Government intended to increase the number of foreign police and police auxiliaries in order to establish a new climate between young immigrants and the police. It was also dealing with the problems of women immigrants, including prostitutes and other vulnerable women.

Questions by Experts

CHRISTINE CHANET, expert from France, asked about the place of the Covenant in the jurisdiction of Belgian internal law. She wanted to know whether there had been a change on the part of the Government on the issue of applicability of the Covenant. Did an individual have to still go through a court to seek the protection of the Covenant? Did the Government feel more bound by the European Covenant on Human Rights? How could a citizen determine whether their civil or political rights had been violated?

She asked about the reservations still held by the Belgian Government regarding the Covenant and whether Belgium intended to accede to the Optional Protocol.

She also asked about the representation of the German minority and other linguistic minorities in Communities controlled by another linguistic culture. What kind of language facilities existed for those minorities and could individuals seek the establishment of such facilities.

KURT HERNDL, expert from Austria, said the Covenant had been transposed into Belgian law by the Courts. The question still existed of direct applicability of the Covenant as a self-executing treaty . Was it only up to a court in Belgium to apply the Covenant or could any administrative authority guarantee recourse to individuals under the Covenant?

WALEED SADI, expert from Jordan, said the fact that the Court of Cassation had ruled on certain articles of the Covenant meant there was a legal precedent for stating that all other articles were equally applicable. He asked why the Constitution did not spell out the specific areas where discrimination was prohibited.

He asked whether the offspring of both women and men received the same treatment in terms of citizenship. There was some discrimination between second- and third-generation foreigners living in Belgium, since they were treated differently under the law. He asked why a Tunisian political and human rights activist had been extradited on 7 February.

Prostitution was legalized in some countries of northern Europe, including the Netherlands, as part of the right to self-determination of women aged 18 and older, he went on. Did Belgium have a similar attitude, or did it believe that prostitution per se constituted a violation of human rights? Was there any policy for assimilating the country's Communities?

JULIO PRADO VALLEJO, expert from Ecuador, said that when a State was party to the Covenant, it had the obligation to harmonize its internal law with that instrument and to guarantee all its citizens the rights enshrined therein. There must be no discrimination between nationals and foreigners in terms of civil rights, and yet in Belgium, the rights of foreigners to reside in certain communes were restricted, which contravened the Covenant's prohibition of discrimination on grounds of nationality.

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, referred to the institutional-legal framework in which the Covenant could be viewed in Belgium. It was clear that the Covenant had been incorporated into Belgian internal law. But questions still remained about the direct applicability and the hierarchy of specific provisions of the Covenant. A dual precondition of both legislative and judicial endorsement seemed to exist for an article of the Covenant to be fully applicable in Belgian law.

He questioned the hierarchy of treaty application. Was there a difference in degree of applicability between the European Convention on Human Rights and the International Covenant? Could a lawsuit be brought under the terms of the Covenant? What were the terms of such a lawsuit and would the Court of Cassation be the only organ of Government considered to handle the case?

REIN AVOVICH MULLERSON, expert from the Russian Federation, questioned the assertion in the report that "no political rights of any kind can be granted to persons who are not Belgian", which differed from the extensive discussion of civil and political rights found elsewhere in the report. He asked what was meant by "certain aliens" being restricted from residing in communes in Greater Brussels. Did that mean aliens from certain countries, or certain regions?

He asked what the impact was of the fact that the different groups of language speakers could sometimes be treated as the majority and sometimes as minorities. Had any treaties been concluded by the Communities? What kind of treaty, and on what subjects? Were they treaties with foreign countries?

Regarding the "alarm bell procedures" developed to protect linguistic minorities, he wondered how often they had been used, both at the national and the community levels. He asked how Dutch- and French-speaking persons were defined; was it on the basis of their ethnic origins? Many people were equally fluent in both those languages; and how would the children of inter-ethnic marriages be defined?

BERTIL WENNERGREN, expert from Sweden, inquired about the Belgian concept of federalism. The Belgian Constitution said that all power emanates from the nation and not the people. He asked if that reversal of the usual form of power coming from the people was perhaps a way to explain the unusual nature of Belgian federalism?

OMRAN EL SHAFEI, expert from Egypt, questioned the applicability of the European Convention on Human Rights as opposed to the Covenant in Belgian law and the reservations made by the Government on several articles of the Covenant.

He said other States had accorded members of specific regions certain rights and responsibilities. He expressed hope that such a differentiation would not lead to unequal treatment of groups of aliens in Belgium.

BIRANE NDIAYE, expert from Senegal, said that Belgium's claim of the courts as the sole institution to apply the provisions of the Covenant was a problem. The executive authority would seem a more appropriate method of applicability of an international treaty. He said he did not understand why aliens were required to be relatively discrete about their State of origin? Political limitations on aliens were not uncommon, but the idea of such discretion was difficult to comprehend.

Reply by Belgium

Mr. DEBRULLE (Belgium), replying to the experts' questions, said there was no difference in the legal status of the European Convention of Human Rights and the Covenant. The difference lay in the kind of control established by the European Court and the European Commission. Given the stringency of that Court, special attention was accorded to its rulings.

He said that when a Belgian judge had two provisions to deal with -- one international and the other internal -- he would give primacy to the former. Any new law must relate to the Covenant. The Court of Arbitration was also bound by the Covenant and the effect of its rulings. As to the distinction between civil and political rights in the Belgian Constitution, it was up to the legislature to decide. The Council of Ministers was expected to approve the First Optional Protocol to the Covenant shortly.

The German-speaking minority was the best-protected in the world, he went on: it consisted of only 60,000 people, who had their own parliament, administration and government. Its Parliament was empowered to deal with matters considered to be of Community competence, which involved the cultural and educational spheres as well as public services.

Regarding the protection of French-speaking minorities in the Flemish areas and vice versa, he said the concept of territorial unilinguism prevailed. The two Communities each had their official language; outside their territories, the two languages were on an equal footing, while German was the language of the German area. The one exception was the 27 language facility communes, where those who spoke a language other than the single language of the area or region could benefit from services in their language.

The reason that the national law contained no specific prohibition on the types of discrimination, he continued, was that because that law assimilated both the Covenant and the European Convention, the specific prohibitions were part and parcel of domestic law.

He said the distinction was made between second- and third-generation immigrants with regard to Belgian nationality because beginning with the third generation, the assimilation process was already well under way, and such persons could be automatically considered as Belgians. For members of the second generation, on the other hand, either the person or his parents had a choice.

He said the reason for refusing the request for asylum of the Tunisian activist was based on the fact that he belonged to an association in his country which practised political terrorism. However, the matter was still in the courts.

Belgium shared the view that when a woman who engaged in prostitution had the proper inoculations and was of age, it was her right to do so, he went on. Nevertheless, the State might have the right to discourage its practice by persons in difficult situations who could be exploited because of their quasi-legal status.

As to the royal decrees restricting foreigners from residing in certain communes, he said some of them would expire next May, while the non-renewal of others was under discussion. In any event, the political justification was that in some communes, in view of the decrepit state of the housing, a concentration of non-Community immigrants -- except for those from EEC -- could promote racist reactions against them.

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HUMAN RIGHTS COMMITTEE SAYS DISCRIMINATION EXISTS IN BELGIUM ON BASIS OF NATIONALITY

Concludes Examination of Second Periodic Report of Belgium

The Human Rights Committee this afternoon concluded consideration of the second periodic report of Belgium, with experts stressing the existence of discrimination on the basis of nationality.

The Committee of 18 experts serving in their individual capacity also drew attention to the need for domestic law to give primacy to the International Covenant on Civil and Political Rights, and for clarification on the status of aliens being held at the Zaventem airport.

Statements were made by the experts from Jordan, France, Sweden, Nicaragua, Japan, Senegal, Ecuador, Cyprus and Austria.

The representative of Belgium answered questions on detention, the appointment and removal of members of the judiciary, the dismissal of trade union representatives and the employment of minors.

The expert from Italy, who is also the Committee Chairman, said in a closing statement that the Covenant had its appropriate position within the context of the Belgian juridical order.

When the Committee meets again at 10 a.m. tomorrow, 8 April, it will take up the third periodic report of Yugoslavia.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to continue its consideration of Belgium's second periodic report on implementation of the International Covenant on Civil and Political Rights. (For background, see Press Release HR/CT/188, issued today.)

Non-Discrimination and Gender Equality

CLAUDE DEBRULLE, Administrative Director of the Ministry of Justice of Belgium, said that provisions had been taken to protect linguistic minorities in several regions. Linguistic Communities could enter into treaties in areas that fall within their powers. That concept was being tested in the Regions as well.

Addressing the rights of aliens, he said that his Government did not wish to disrupt relations with countries of origin. That desire was the basis of the application of the discretionary provision concerning information on the alien's country of origin.

Right to Life, Freedom of Movement

Mr. DEBRULLE (Belgium) said the legislative bill dealing with the death penalty had lapsed with the fall of the most recent Government. With the formation of the new Government, the bill would be re-introduced. The bill would abolish the death penalty in times of peace with the provision that it could be re-introduced during times of war. Belgium would ratify the Second Optional Protocol after the adoption of the bill for abolition of the death penalty.

The general principles, he said, of the legal use of force were based upon whether the action was entirely necessary, whether it was the last means of possible action, and whether it was entirely appropriate. The action could not endanger other individuals. Use of firearms was limited to legitimate defence and legitimate protection. The police, for example, would have such a right. Firearms could be used in the suppression of riots under carefully controlled conditions Clear and previous warnings to disperse and the exhaustion of all attempts at peaceful dispersal would be required.

The protection of youth, he said, fell within the jurisdiction of the individual Community. The Communities did not, however, always have adequate detention facilities for juveniles. The Minister of Justice was attempting to resolve that problem.

In places of detention, he said, fundamental freedoms were guaranteed. All the protective measures applicable in places of detention would be available for instances of psychiatric treatment.

The objectives of a new law on the conditions of preventive detention were designed to guarantee the fundamental rights of the individual and to ensure the administration of justice. For example, the intervention of a

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judge was guaranteed within the first 24 hours of preventive detention. The right of second judge was called for within five days. A record of the arrest and hearings were required. All interrogations must be monitored and the detained person must have free communication with an attorney. There had to be the possibility of a public hearing if the period of detention exceeded six months. The new law did not establish a maximum duration for preventive detention. Remedies for abusive measures were very specific in Belgian law and provision existed for compensation.

Several cases of inhuman or degrading treatment, he said, had been brought before judges. Two, for example, were cases of solitary confinement. The cases claimed that such confinement was contrary to internaticnal law and adversely affected the health of the prisoners. The Belgian State justified those measures by the need to separate dangerous prisoners from the rest of the prison population. The appeal judge initially ruled against the State, saying that the rules of confinement were arbitrary. That appeal was subsequently overturned by a higher court. The issue of the health concerns of such a high security regime of confinement had not yet been fully resolved.

He said the United Nations Standard Minimum Rules for the Treatment of Prisoners had been made readily available to all persons within the penetentiary system in all official languages. The Belgian Minister of Justice had introduced new rules governing the deportation of aliens accused of serious crimes. Those persons requesting asylum who did not possess the necessary documents to enter the country were kept at a centre at the airport of Zaventem while awaiting action on their request.

Questions by Experts

WALEED SADI, expert from Jordan, said the affirmative dimension of the right to life -- including the right to health, the elimination of epidemics and pollution-related issues -- should be addressed. What action was the Government taking to give the right to life that wider meaning?

CHRISTINE CHANET, expert from France, asked for clarification on the rules requiring that persons be allowed to appear before judges within a certain period of time. How was the monthly monitoring of provisional detention carried out? Did individuals have the right to ask for the presence of a lawyer as soon as they were arrested, or only after a certain amount of time? Were the medical check-ups of detainees carried out by independent doctors? What was understood by "secrecy" with respect to detention?

She said persons being held for two months in transit zones should have the right to recourse. During that detention, did they come before a judge, and could they have remedy under article 9 of the Covenant, which concerned the right to liberty and security of person? she asked. Such persons were under a kind of administrative, if not judicial, detention; it was not realistic to say they could leave for their own countries at any time.

BERTIL WENNERGREN, expert from Sweden, asked where the law stood with regard to organ transplants from aborted foetuses.

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Mr. DEBRULLE (Belgium) said a case had been brought claiming that families whose electricity had been cut off for failure to pay the utility company had had their right to life attacked because of the inhuman and degrading treatment which their precarious living conditions constituted. However, the European Court of Human Rights had declined to hear the case.

Belgium's approach to the right to life was fairly narrow and restrictive, he went on. A different set of provisions nevertheless existed to protect people's health, provide preventive treatment of the acquired immunodeficiency syndrome (AIDS) and protect "third-generation human rights", such as the right to a healthy environment.

He said a council assessed the appropriateness of detention. The presence of a lawyer could begin with judicial detention, not during the administrative period. Usually, the doctors performing medical check-ups were affiliated with penitentiary establishments, a practice that had been criticized. Belgium wished in future to use independent doctors. When individuals were held in transit areas, they could use a remedy and did not have to wait.

Right to Fair Trial, Freedom of Expression, Protection of Child

Responding to written questions posed earlier by experts on the right to a fair trial, freedom of expression and association and protection of the family and child, Mr. DEBRULLE (Belgium) said judges were appointed by the executive branch, generally upon submission of two lists. Since the Constitution guaranteed their appointment for life, they could be removed or suspended only with their own consent or by a judgement of the Court of Appeals.

He stated that the legal profession was independent and private, and that attorneys at the Belgian Bar must be Belgians or nationals of the European Economic Community (EEC). They must also possess a law diploma, take an oath and be a member of the Bar where they wished to provide service. They could not be judges or notaries, become involved in business or be remunerated by public or private powers.

Indigents could ask that an attorney be appointed to defend them, he continued. However, since such cases were frequently entrusted to apprentices and offered low pay, the Government had a series of proposals for providing other means of assistance, such as social assistance committees and a 700 million franc fund to subsidize attorneys who did pro bono work for poor clients.

At the same time, he went on, the judicial assistance system provided the machinery to cover the expenditures of a judicial or extrajudicial trial. That system was being criticized, so an advisory committee had been set up to improve it. Possibilities included cooperation between the Bar and the social assistance committees.

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The general principle in Belgian law regarding the freedom of expression was that it could not be the subject of any preventive measure restricting its exercise, he said. Censorship was not permitted, and there was complete freedom of the press.

Among the examples of "serious reasons" for dismissing trade union representatives without warning or compensation, he cited any kind of serious infraction that would render professional cooperation between employer and worker impossible. He said a 1991 law stipulated that members of trade union delegations could not be fired for reasons deriving from the exercise of their mandate, but they could be fired for reasons unrelated to that exercise. Such reasons included insubordination, disorganization of work, threatening a colleague with a knife, incitement to strike without respecting procedures and cutting electricity.

The law prohibited employers from hiring children younger than 15 or 16 years of age who had not met their legal schooling obligations, he said, with the exception of educational training activities. Any underground work in mines or quarries was prohibited for children under the age of 18; they were also prohibited from performing work beyond their strength or which threatened their health or their morals.

He stated protective provisions also existed for young people working on Sundays or at night. Access to sports contracts could also be subject to restrictions. There were certain exceptions, which applied to children engaged as actors, models or in cultural, scientific, educational or artistic exhibitions. Those laws were monitored by inspectors on social laws and penalties were issued by the courts.

Questions of Experts

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, said the Constitution protected freedom of the press, although a judge could intervene to prohibit a given publication that might cause collective harm. Had there been any constitutional decision by the courts or provision in the law reconciling preventive intervention and the protection of the freedom of the press?

He asked about trade union membership in the National Workers' Council. What were the criteria for worker organizations' access to the Council? What measures had been taken to respect the recommendations of the International Labour Organisation (ILO) concerning such representation criteria?

NISUKE ANDO, expert from Japan, said there was little information in the report about the freedom of expression. What type of ownership of television stations existed? What type of controls were placed upon Belgian television?

BERTIL WENNERGREN, expert from Sweden, expressed concern about freedom of assembly. He noted that Belgian law stated that open-air assemblies were subject to police laws, and that municipalities were primarily responsible for the maintenance of law and order at large gatherings. He said article 21 of the Covenant required that no restrictions be placed upon the right of

assembly. He asked how did the Constitution properly protect that right in light of the police law provision?

BIRAME NDIAYE, expert from Senegal, asked if the fact that Belgium was a kingdom had created an aristocracy or a condition of privilege for certain persons. Did the existence of a monarch affect access by various persons to employment?

Mr. DEBRULLE (Belgium) said an exclusively Constitutional Court was not provided; the Court of Arbitration ruled in such matters. Concerning the power of judges to intercede in a broadcast or publishing dispute, they could intervene only in a marginal way and only when a major interest could be damaged.

Representation on the National Labour Council was subject to specific criteria of a minimum membership size for the union seeking representation, he said. He added that he was not aware of the action on the ILO recommendation.

In Belgium, he said, public television stations were State-owned. Private rival stations had been established and they enjoyed the same access. There was no direct monopoly. A law existed to control advertising on television, but it had never been enforced.

He said some public functions were reserved for members of the royal family, but the civil service was entirely open. The monarchy did not hamper the system of equality in any way.

Concluding Observations by Experts

Mr. ANDO, expert from Japan, said he was concerned about the relationship between the Covenant and the European Convention on Human Rights. While it was true that the two documents frequently duplicated each other, article 14 of the Covenant was rather detailed by comparison, and article 26 was unique and should have its own place in the Belgian domestic legal system.

He was also concerned, he said, about the jurisdictional problem between the federal and the communal levels. The act concerning the protection of young persons, while a national legislation, was implemented largely by each Community. International obligations were the responsibility of the central Government, which ensured that the Communities complied with them.

He recalled that Belgium had filed a reservation regarding the separation of juvenile offenders from adults because the country did not really practice that separation. However, since the problem derived from ambiguous wording, there was really no need for the reservation, and Belgium should reconsider it, he said.

Mr. NDIAYE, expert from Senegal, said that perhaps the statement that "Belgium does not share the view of the Human Rights Committee that the

obligation to vote is incompatible with the freedom of conscience guaranteed by the Covenant" should be withdrawn from the report. The Committee in fact took no position on the obligation or right to vote.

JULIO PRADO VALLEJO, expert from Ecuador, said the report could serve as a model for other countries. Responses had been very clear and objective, permitting a highly constructive dialogue. There was, however, a juridical vacuum in Belgium, overcome in part by judges and courts, but it was not possible for the Covenant in toto to be invoked or applied directly; further clarification was needed.

There was also discrimination on the basis of nationality, he said. The decrees excluding foreigners from residing in certain communes had been laid down after the Covenant had come into effect in Belgium; the first responsibility of a State party was to harmonize domestic legislation with the Covenant, but the legislation was incompatible with that instrument.

Mr. WENNERGREN, expert from Sweden, said the Belgian legal system was rather complicated, particularly regarding interaction between the two Communities. None the less, that system complied to a great extent with the Covenant. There might be some questionable points; Belgium should further explain the treatment of aliens.

It was a violation of the freedom of conscience to oblige citizens to vote, he said. It was degrading to require, as Belgium did, that every citizen deposit a void or blank ballot paper rather than be punished for not voting.

ANDREAS V. MAVROMMATIS, expert from Cyprus, said the Belgian Constitution provided a complex and elaborate structure for the protection of fundamental rights.

KURT HERNDL, expert from Austria, said the report demonstrated Belgium's concern for human rights. The system dealing with the various linguistic Communities was complex, but it appeared to serve all the groups well. He hoped the Government would reconsider its reservations concerning certain articles of the Covenant.

Mr. SERRANO CALDERA, expert from Nicaragua, said Belgium had no substantial problems concerning human rights. The devolution of the federal State seemed to be based upon the needs of the two primary linguistic Communities.

Ms. CHANET, expert from France, said the defence and protection of minorities were insured in the Constitution of Belgium. Problems still existed in the areas of equal opportunity for women and for immigrants.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1144th Meeting (AM)

HR/CT/190
8 April 1992

SEVERAL EXPERTS URGE COMMITTEE CONSIDER YUGOSLAVIA'S HUMAN RIGHTS REPORT ONLY ON INTERIM BASIS IN VIEW OF RECENT EVENTS

Human rights in Yugoslavia had been overshadowed by recent events. Thus, this was not the time for the Human Rights Committee to attempt more than an interim examination, several experts said this morning as consideration of that country's third periodic report began.

The report is intended to describe States parties' compliance with the International Covenant on Civil and Political Rights. The 18-member Committee of experts, serving in their individual capacity, is charged with overseeing implementation of the Covenant by the 102 Member States who have ratified it.

Discussion this morning centred on the right to self-determination of the peoples of Yugoslavia and on human rights violations being carried out by the Federal army in the name of restoring constitutional authority. Several experts said the Federal Government should be subject to higher standards of observance of the Covenant than the breakaway republics, and called for the exercise of greater control over the troops. The Constitution expressly stated that Yugoslavia consisted of six republics which had united freely and voluntarily and therefore had the right to disunite.

The adviser to the Federal Secretary for Foreign Affairs of Yugoslavia introduced the report and in response to questions, stressed that the Government recognized the rights to self-determination and secession, but only according to constitutional law. The artificial and unilateral creation of the borders of certain republics threatened many ethnic minorities living within those borders.

Statements were made by the experts from Nicaragua, Austria, Hungary, Egypt, Cyprus, the Russian Federation, Sweden, Ecuador and Jordan.

When the Committee meets again at 3 p.m. today, it will continue its debate on the Yugoslavia report.

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For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to consider the third periodic report of Yugoslavia (document CCPR/C/52/Add.9) on the implementation of the International Covenant on Civil and Political Rights.

The Committee will examine the effect of the current crisis in Yugoslavia on the constitutional order and on the State's ability to respect and ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant. It will seek clarification of the status of amendments to the Constitution since November 1988 and the adoption of new Constitutions by what the report refers to as "federal units".

It will inquire about the status of rights available to individuals affected by recent military operations. Descriptions will be requested of the violations of human rights during the military operations; investigations of the cases of torture, disappearance and killing; and action taken to punish those found guilty. Supervision of places of detention, and procedures for complaints by detainees will also be examined.

Questions will also be raised about limitations of basic freedoms during the current crisis, as well as measures to prevent repression and discrimination based on ethnic, religious or political affiliation which had been reported in the legal systems of certain republics.

Report of Yugoslavia

The reform process of the socio-economic and political system of Yugoslavia had been initiated and intensified by amendments made to the Constitution in November 1988, the report states. Under those changes, the old system of non-ownership of property and one-party rule had been abandoned. A transition was undertaken to a market economy and a political system calling for multiparty elections, political pluralism, and the attainment of internationally recognized standards of citizens' rights.

According to the report, the amendments broadened the guarantees and equality of citizens, limited capital punishment, prohibited torture or cruel and inhuman punishment, introduced a new law on the freedom of conscience, limited violations of privacy, created free trade union activity, and expanded the freedoms of religion and political organization.

The report states, however, that the complexity of the process and the length of time needed to change the Constitution, linked with the refusal of the federal units to give their consent to the amendments, had led to a constitutional-legal crisis. It had created a blockade of further development and promotion of the rights and freedoms of citizens. New constitutions had been adopted in the republics which in some cases regulated fundamental rights and freedoms more completely. Possibilities had been created for repression and discrimination based on ethnic, religious or political affiliation. Such actions had brought about ethnic conflicts, a political-legal crisis, and the strengthening of nationalist totalitarianism.

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According to the report, the Yugoslav Constitution stipulates the right of every nation to self-determination, including the right to secession. The federal units, however, had unilaterally initiated a process of decision-making on whether their people would remain in an association with other Yugoslav peoples. Accordingly, the Assemblies of Slovenia, Croatia, Serbia and Macedonia had passed declarations of sovereignty.

The Constitutional Court of Yugoslavia had issued decrees suspending the actions of Slovenia and Croatia and was assessing the legality of the other declarations by the federal units. None of the Court's rulings had been obeyed by the federal units. The state of the constitutional-legal chaos which resulted from the adoption of unilateral acts, the blocking of the actions of federal institutions, and the failure to observe constitutionality and legality was harming the whole country and especially its citizens.

In the process of expanding rights and freedoms in harmony with internationally recognized standards, amendments to the Federal Constitution had been proposed that guaranteed equal rights and duties of citizens, irrespective of nationality, race, sex, language, political conviction, social origin, birth, education, social status, or other personal characteristics. However, the establishment of autonomous legal systems in the federal units had resulted in the adoption of various acts which were contrary to those in the Federal Constitution. Some of the acts directly affected the exercise of the rights recognized in the Covenant.

The report states that on 27 February 1989 the Presidency of Yugoslavia, assessing the deterioration of the situation in the Province of Kosovo, had authorized certain measures to protect constitutional order, public law and order and the safety of citizens. Due to riots in Kosovo that had resulted in the loss of lives, public gatherings were prohibited and a curfew had been imposed. The Secretary-General had been informed of the actions taken by the Government.

Regrettably, in spite of the many favourable efforts on the part of the federal Government to comply with and attain all international standards, the state of human rights and freedoms in Yugoslavia was worsening. Flagrant violations of basic human rights had occurred during the armed conflict, including violations of the rights to life, physical integrity, freedom of movement and due process of law. As the conflicts were still in progress, relevant data could not be obtained from all the republics.

The legal bodies of the federal State, the report states, had insisted on the equalization of the legal systems being developed in the republics and their unification within the legal system of Yugoslavia, especially in the area of human rights; the abandonment of the principle of exclusivity by the republics; and the insurance of respect for the human rights of national minorities living in the republics. The Government also expected that citizens and national minorities would respect the legal order and institutions of the State and that the exercise of all judicial rights would be done by internationally accepted standards.

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Vehement nationalistic unrest had been unleashed in Yugoslavia by the processes of political pluralism, the report claims. Those processes had been attended by separatist, hegemonist, and totalitarian tendencies in the republics. The actions of those republics had completely disregarded Yugoslavia's international obligations.

Introduction of Report

MIODRAG MITIC, Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia, introduced the country's third periodic report on implementation of Covenant provisions. He said the circumstances under which the report was being delivered were extraordinary. It was a time when the basic human rights of the citizens of Yugoslavia were being seriously threatened.

In spite of the Yugoslavian history of one-party rule, the development of human rights had been impressive under recent constitutional reform, he said. The constitutional system in the past two years had undergone fundamental change. An end to the one-party monopoly and the promotion of freedom of expression and political activity was part of that reform. The constitutional reforms in the area of human rights implementation had come closer to international standards.

The rising nationalism and the resulting armed conflicts in the republics had created a constitutional-legal crisis, he went on to say. The Constitution stated that the constitutions and laws of the republics could not be contrary to the Federal Constitution. The recent unilateral actions of the republics had been reviewed by the Federal Executive Council and the Constitutional Court. The Council and the Court had not recognized the acts and decrees and had declared them unlawful and invalid.

The Government of Yugoslavia had informed all members of the international community with which it had relations that the acts of secession and subsequent laws passed by the republics of Croatia and Slovenia were unlawful and invalid. The Federal Government recognized the rights to self-determination and secession, but only according to constitutional law. The unilaterlal acts of secession were a threat to all peoples rights to self-determination and a violation of the Constitution.

Yugoslavia was a multinational republic, he said. The artificial and unilateral creation of the borders of certain republics threatened many ethnic minorities living within those borders. The right to self-determination applied to nations and not to individual federal republics. The administrative borders of republics were not internationally recognized boundaries. The armed conflicts in Croatia and Slovenia were a threat to the rule of law and to the human rights of citizens in those federal republics.

Despite all the difficulties, he said, the Government had made every effort to ensure that the conference in Yugoslavia would resolve the conflicts among the republics. It was unwarranted to single out Yugoslavia as a bad example of human rights implementation in the light of the current situation in the republics.

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The creation of a new constitution on the federal level, he said, had continued in spite of the current crisis.

Constitutional Framework, State of Emergency, Self-Determination

Responding to written questions posed earlier by Committee experts on their receipt of the report, Mr. MITIC (Yugoslavia) said it was evident that the Government did not control the situation in the whole of Yugoslavia. Some republics had been recognized by 50 or 60 States, and that was an obstacle. There were many questions relating to the division of Yugoslavia still to be solved. While not recognizing the republics, the Government had to face reality.

Those republics wishing to stay in Yugoslavia were preparing a new constitution, he went on. It was based on the concept of a new federation comprising Serbia and Montenegro and open for the participation of all others wishing to accede. The 1974 Constitution was based on the concept of a confederation, even though Yugoslavia was nominally a federation. The adoption of that Constitution had marked the beginning of the disputes.

He stated that the new draft constitution's provisions were similar to those found in Western European countries and would be voted on by parliamentary deputies. In the meantime, it was illusory to expect adoption of the constitutional amendments described in the report.

Regarding the 1981 state of emergency in Kosovo, he said all such measures had been lifted in 1989. As to the inter-ethnic war, there had been no measures set out resembling those of a state of emergency. The only measure taken by the Presidency was a limitation on travel abroad by male Yugoslav citizens of draft age -- between 18 and 60 years -- who were required to obtain a certificate of military authority stating they were not about to be drafted.

Although safeguards and remedies were theoretically available to individuals through their access to the courts, it was difficult to expect regular protection from the courts. In response to the acts of genocide being carried out against the Serbian population in Croatia, he continued, the Government was ready not only to prevent crimes by military and paramilitary units, but also to punish those who committed such acts.

The Government, he said, had proposed to the Parliament that it ratify the First Optional Protocol to the Covenant. That would probably be one of the first declarations of the new Parliament.

Further Questions by Experts

ALEJANDRO SERRANO CALDERA, expert from Nicaragua, said the Committee was facing an exceptionally complex and delicate situation. The political and legal sitution went far beyond the usual consideration of the monitoring of

human rights. The report of Yugoslavia spoke of legal-constitutional chaos existing because of events which went beyond the powers of government to respond.

The Constitution of the Federal Republic of Yugoslavia was in collision with the provisions of various constitutions and laws of the individual republics, he said. Individual laws of certain republics threatened the civil and political rights of minorities. A civil war was being waged in Yugoslavia. What was the status of the Covenant in the current crisis? Was there any reference to the Covenant in the new laws being passed?

KURT HERNDL, expert from Austria, expressed concern about the issue of self-determination as expressed in the reports. The central Government obviously did not recognize that right. The Constitution expressly stated that Yugoslavia consisted of six republics which had united freely and voluntarily. If they united voluntarily, they also had the right to disunite. Three of them had already been recognized by other members of the international community as sovereign States.

The Covenant applied to the whole of Yugoslavia, but the Government was obviously not in a position to guarantee its authority throughout the country, he said.

JANOS FODOR, expert from Hungary, said it could be more effective to consider a report by a State party to the Covenant during the existence of a crisis rather than consider it in historical retrospective. The report, however, did not deal with the full period covered from 1983 to the present.

He asked what measures were taken by the federal bodies to prevent the outbreak of violence in the republics and to obtain solutions to the problems of those republics, when the independence of Slovenia and Croatia first became obvious. During the past year, many serious violations of human rights were documented by international organizations. The report failed to deal with those extreme violations of Covenant articles. Details were necessary to provide a complete picture of the crisis.

The period since the United Nations-sponsored cease-fire had been implemented should have been dealt with in the report, he said. It could have furnished the Government's plans to resolve the crisis.

The report was silent about the attempt by the autonomus provinces to achieve independence, particularly Kosovo, he continued. In the light of the long history of armed conflict, what view did the Federal Republic have of the future of the two autonomous provinces of Kosovo and Vojvodina? Did the Federal Government reflect the interests of all the citizens of each republic or only the interests of the republics of Montenegro and Serbia?

He asked about the state of emergency proclaimed in Kosovo. What rights were suspended during the state of emergency? What rights had been derogated

from in practice when the state of emergency was not in force? How could the Government justify the actions taken against Albanians during the state of emergency such as the firing of teachers and the closing down of schools?

OMRAN EL SHAFEI, expert from Egypt, said it was not only a question of whether rights were being observed but also of political and security matters and the observance of obligations entered into by the State. The Committee had to distinguish between the two general elements. There were also the political developments and the desire for secession by some of the political components, as well as the question of self-determination.

There was the viewpoint of the Federal Government, which was that the provisions of the Federal Constitution had to be followed but were not. After considering the extent to which the Government had observed the rights and freedoms prescribed under the Covenant, the other viewpoint was that there were many breaches and excesses.

One example was the use of military force by the Federal army in Kosovo, he continued. Had all obligations under the Covenant been observed? he asked. Had the Government used its authority with the army so that it did not indulge in excesses? What were the entities it expected would join the new State? Did minorities enjoy autonomy under the current Constitution?

ANDREAS V. MAVROMMATIS, expert from Cyprus, asked if under the circumstances, the Committee really wanted the usual sort of report. He wondered what it could realistically expect, given that the Government did not have the slightest idea what was happening in areas of civil strife. Perhaps the Committee should concentrate instead on the state of emergency and protective measures being taken.

Had Croatia and Slovenia declared their intention to consider themselves bound by the provisions of international treaties, including the Covenant? he asked. What measures had been taken to protect ethnic or national minorities? What articles of the Covenant were presently being derogated from in Kosovo? No proper control was being exercised over the army, which was having an adverse effect on a rapidly deteriorating situation. What measures were envisaged for the future to control the army?

REIN AVOVICH MULLERSON, expert from the Russian Federation, said that there were many underlying reasons for the anguish of the current crisis in Yugoslavia. One related to the tendancy of old communist regimes to hold together territory for reasons of central authority, even against the will of peoples for self-determination. When central authorities had to resort to force to keep recalcitrant peoples under control, then their right to self-determination must be considered.

The Government was constitutionally responsible for the rights of all the people, he said. Although that de facto control only existed in Serbia and Montenegro, what would be the status of the Covenant in the other republics?

The report stated that Serbia had declared itself an independent and sovereign State. How could it be an independent State and then still be a part of the Federal Republic of Yugoslavia?

BERTIL WENNERGREN, expert from Sweden, said that according to the report, Slovenia and Croatia had seceded from the Federal Government, but they had not seceded from the system of federal law. The Covenant was understood to be a part of federal law. The Covenant should then still be in force in both Croatia and Slovenia. As soon as those republics had created their own laws, then they would cease to be subject to federal law. Until that time the Covenant should still apply. What would Croatia and Slovenia do to confirm the Covenant in their own countries, after they ceased to be subject to federal law? he asked.

JULIO PRADO VALLEJO, expert from Ecuador, said the key problem was the collective principle set out in the Covenant -- namely, the right to self-determination. What measures was the Government taking to ensure the Covenant was being applied? What had been done to investigate the atrocities? The Serbian forces seemed to be involved in the violations and had been accused of openly violating human rights, including the right to life.

WALEED SADI, expert from Jordan, said that at best the Committee should conduct an interim examination of the situation in Yugoslavia. In view of the huge restructuring under way, now was not the time to discuss all aspects of human rights, since they had been overshadowed by recent events.

One of the basic issues, he went on, was the right to self-determination. The Government had no quarrel with the rights of nationals to enjoy that right, provided it was done by constitutional means; the problem was with resorting to the use of arms to exercise that right. Did those peoples have the constitutional means to enjoy their right to self-determination? he asked. If so, there was no need to resort to armed conflict. What constituted a minority that could not enjoy the right, and what constituted a people that could?

He said he was concerned about the basic human rights violations. The Federal Government should be subject to a higher degree of supervision and to higher standards of observance of the Covenant than breakaway republics, especially where the status of the Covenant had yet to be articulated. Amnesty International had documented a series of grave violations by troops; would the Government be in a position to investigate those cases and respond to the Committee as to their veracity? he asked. What punishment had been meted out to the perpetrators? Both sides had committed atrocities, but the central Government had to be put on a higher level of accountability.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
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HUMAN RIGHTS COMMITTEE CONTINUES EXAMINATION OF YUGOSLAVIA'S PERIODIC REPORT ON MEASURES TO IMPLEMENT CIVIL AND POLITICAL RIGHTS COVENANT

Representative Calls Yugoslavia a 'Living Organism'; Says Some Countries Have Interfered in His Country's Internal Affairs

Yugoslavia was not only a geographical notion, it was a living organism, the representative of that country's Government told the Human Rights Committee this afternoon during its ongoing consideration of the report of Yugoslavia on its compliance with the International Covenant on Civil and Political Rights.

The Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia said that all the republics must continue to work together to solve common problems, but that since one third of Yugoslavs were of mixed ethnic background, the problem of secession had to be balanced against the rights of ethnic and national minorities.

The concept of the right to self-determination included respect for territorial integrity and non-interference in internal affairs, he said. Those principles had not been respected by some members of the international community in their treatment of Yugoslavia.

To comments about the responsibility of the Yugoslav Government for acts of its army, he said the Federation, as well as its army, was in a state of disintegration; one could not expect a normal situation in the army, which could not bear the sole blame for the destruction of towns and villages. There were also the paramilitary forces established to protect the interests of different groups.

The experts from Costa Rica, Japan, France, Sweden, Hungary and Austria asked questions and made comments about the constitutional framework within which the Covenant is implemented, the state of emergency, self-determination and the right to life.

The Committee will meet again at 10 a.m. tomorrow, 9 April, to continue its examination of the report of Yugoslavia.

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For information media--not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to continue its examination of Yugoslavia's third periodic report (document CCPR/C/52/Add.9) on its implementation of the International Covenant on Civil and Political Rights. The 18 experts of the Committee will consider the issues of the right to life, treatment of persons deprived of their liberty as well as freedom of movement, religion, assembly and expression.

Constitutional Framework and Self-Determination

JOSE AGUILAR URBINA, expert from Costa Rica, inquired about the actual process of self-determination referred to in the Constitution. The ideas of nation and republic had become confused. Where did the concept of nation end and the concept of republic begin in the Constitution of Yugoslavia?

He asked about the current position of the Government regarding the multiparty political process. An amendment to the Constitution suggested instances of capital punishment in acts of war. What were the specific instances? Acts of torture were prohibited for offenders, but what about for the rest of the population?

NISUKE ANDO, expert from Japan, expressed regret that the report did not cover the period from 1983 to 1988 as had been requested. He asked about the legal and actual application of the Covenant in Yugoslavia. Apart from Kosovo, he said, few other specific situations involved in the emergency were mentioned in the report.

CHRISTINE CHANET, expert from France, said the situation in Yugoslavia had been described as a civil war. The report, however, suggested that it only involved a constitutional-legal crisis. When ports were bombed or taken by siege, whole areas destroyed and civilian prisoners taken, the "crisis" was a war.

The military operations in the country involved the whole army of the Federal Government, she said. What control did the Government exercise over the army in those operations? What legal basis justified the intervention by the army and the use of force?

She asked about a draft constitution that referred to which republics would remain in the federation. What republics were included? What would be the status of Kosovo? Elections were mentioned. Would they include a referendum on the Constitution?

MIODRAG MITIC, Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia, said the implementation of the right to self-determination was a question of principle. Two crucial problems -- one of secession and the other of the rights of ethnic and national minorities -- affected the right to self-determination. All Serbians, Slovenians, Croatians, Macedonians and

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Montenegrans had the right to self-determination. The Government never denied the rights of the peoples to self-determination. It was only a question of the proper method to be used to reach self-determination.

Although the Constitution defined the process of self-determination, he continued, the republic of Slovenia had attempted, unilaterally and violently, to secede. The Parliament had even attempted to draft rules for secession to guarantee rights and responsibilities. The crucial question was the rule of law, not an attempt to deny the right to self-determination.

In 1991, Slovenia had acted violently to seize control of the borders of the republic, he said. The Yugoslav Government ordered 2,000 soldiers to take back control of the border and border posts. Slovenian republican military units had attacked the army soldiers and prevented them from reaching the frontier. Some 60 people were killed. During the Slovenian military action, authorities of the European Community had requested the Slovenians and Croatians to restore all the border markers and border posts of the Federal Republic. That was never implemented.

Discriminatory measures and military actions were initiated against the Serbian population by Croatian paramilitary forces, he went on to say. The army had been positioned between the Serbian population and the paramilitary groups. The army had intervened by order of the Presidency. Whether it was a constitutional decision was open to question.

Unfortunately, neighbouring States had contributed to the crisis, he said. The truth of the situation was not black and white; it was impossible to only blame the Yugoslav army for the destruction of towns and villages.

The right to self-determination was not simple in the Yugoslavian situation, he said. The concept had been developed, historically, in the context of the experience of colonialism and was reflected in various General Assembly resolutions. It also included respect for the territorial integrity of all nations and non-interference in internal affairs. Nothing should authorize the dismemberment of Member States who had conducted themselves as legitimate and responsible members of the international community. The right to self-determination had to be considered in terms of non-interference in the internal affairs of a State. Those principles had not been respected by some members of the international community in their treatment of Yugoslavia.

According to the Yugoslavian Constitution, the President of the Presidency was always a member of one republic or autonomous province, he said. A year ago, the President was supposed to be from Croatia. The members of the Presidency initially refused to confirm the Croatian candidate. A compromise was sought and rejected. That candidate had been opposed because he had been responsible for many destructive policies in Croatia. Although the candidate was subsequently confirmed, he resigned and returned to Croatia to proclaim the end of the Federal Republic. The situation of the Presidency was but one contributing factor in the climate that had contributed to the violence of the crisis.

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The Government, he said, was aware of its responsibility in the implementation of the Convention. Questions of principle must give way to reality. It was a fact that more than 50 States had recognized Croatia and Slovenia and others had recognized Bosnia-Herzegovina and Macedonia. The Government did not deny the right of independence of the republics. However, issues of common property, citizenship, minority rights that had to be considered in the pursuit of that right. Yugoslavia was not only a geographical notion, it was a living organism. Almost one third of Yugoslavs were of mixed ethnic background. Yugoslavia existed and, in de facto terms, consisted of Serbia and Montenegro.

The European Community and the United States had recognized Bosnia-Herzegovina. Bosnia was the only Yugoslav republic composed of Muslims, Serbs and Croats. Every decision affecting those three peoples must respect the wishes of each group. Muslims, making up 40 per cent of the population, wanted an independent republic. Croats, making up 12 per cent, preferred a Bosnia which served as a bridge or a republic with three different regimes. Serbs, making up 33 per cent, would not choose to be in an independent Bosnia separated from Yugoslavia.

Muslims and Serbs had established paramilitary forces to protect their respective interests in Bosnia, he said. That had created an extremely difficult situation. The recognition of Bosnia by the European Community and the United States did not solve the crisis or guarantee an end to the violence.

He said the Constitutional Court and Yugoslav Government were not able to implement decisions in territories beyond their control; in Bosnia-Herzegovina and Macedonia, for example, the laws had changed, while it had not been possible for the Government to act in Slovenia and Croatia, because the forces were not under its control.

As to whether the Covenant was in force in his country, he said it was. Croatia and Slovenia claimed they respected international law, although there were problems in Croatia with respect to minorities. More than 1 million people declared themselves Yugoslavs; Yugoslavia was a living organism. The secessionist republics and the others realized they must solve common problems and could not live in isolation. Yugoslavia was still one economic and monetary territory, and cooperation among enterprises from all the republics continued.

The problem of self-determination was indeed crucial, he said. There were six Yugoslav republics or nations which constituted the Yugoslav Federation. The Constitution did not explicitly provide for the right to self-determination and secession, nor did it specify the procedures for realizing that right.

He stated that a draft law on the right to self-determination was before the Parliament, pending parliamentary elections. While three republics had been recognized by other countries and had sovereign rights, they were still not recognized by his Government. All were trying to find ways to solve the problems; they were not enemies and had to live together. Yugoslavia was

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still bound by international treaties; it had the only common office for controlling airspace, while the central body for the law of the sea, competent for the entire country, was in Croatia.

To comments about the responsibility of the Yugoslav Government for acts of its army, he said the Federation was in a state of disintegration and the army had also been affected; one could not expect a normal situation in the army. Paramilitary troops were prohibited from fighting under their own commanders, and could fight only under the control of the army. It was not always possible to control volunteer units, however, and there had been some incidents.

Yugoslavia was trying to abolish the death penalty, he went on; that would be dealt with in the new Constitution. In the past 30 years, however, there had been no death penalty in Slovenia.

As to why Yugoslavia did not recognize the "republic of Kosovo", he asked for an example of a minority being given self-determination. It was a question of principle: Was one national minority entitled to the right to self-determination, including secession? If so, that applied to other countries besides Yugoslavia.

Yugoslavia had not proclaimed a state of emergency during the armed conflict in Croatia because of formal limitations contained in provisions of the Covenant, he continued. Many rights had been endangered. In the opinion of the Presidency, it was not necessary to limit human rights; they were themselves limited by the armed conflict in the territories concerned.

As to dismissals and school closings in Kosovo, allegedly on grounds of racial discrimination, he said that if someone were absent from work for a certain period, it was the employer's right to fire him. In the past year, only six Albanian workers, and 24 Serbs, had applied to the court for remedy. If the Albanians were not represented in the Kosovo Government, it was because they had refused to take part in the elections.

Two secondary schools had been closed in Kosovo, he went on. The Albanian minority refused to send children to the schools, even though the educational programmes had been accepted by all schools in Serbia, including national minorities.

Regarding the future of autonomous provinces in Serbia, he said the Serbian Government had not rejected the notion of such provinces. The status accorded those provinces under the 1974 Constitution had been greatly criticized; it was said that the provinces had then been able to abuse the rights and attributes normally associated with statehood, such as the right to relations with foreign countries and to have their own legislation.

He said that that status might not be maintained in the new Constitution, although it did provide for the existence of autonomous provinces. Parliament would first have to be elected, and then it would have to adopt the Constitution. A referendum could also be held, although he did not know if one would be.

It was the Government's responsibility, he continued, to ensure the cease-fire as a prerequisite to the activities of the United Nations Protection Force in Yugoslavia (UNPROFOR). Yugoslavia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had adequate national provisions concerning torture. It was a problem of implementation and not of legislation.

BERTIL WENNERGREN, expert from Sweden, said he understood that the Covenant would be implemented in the seceded States. Since the Federal Government had not been able to report on areas outside of its control, would it be logical to ask for individual periodic reports from those republics of Slovenia, Macedonia and Croatia.

Mr. MITIC (Yugoslavia) said that since those republics were not members of the United Nations, the Committee could not ask them for reports. Whether they would be Member States in the future would depend on the outcome of the upcoming conference. There was no current legal basis for asking those republics for reports. Some republics had cooperated when asked for information, others had not. The behaviour of all secessionist republics was different. Slovenia had been cooperative; Croatia had been uncooperative. He pointed to the situation in Macedonia as being very different where no violence with the army had occurred. Serbia, Montenegro and Macedonia all shared the same religion, and religion was, of course, a major factor in the violence affecting the other republics.

Right to life, Treatment of Detainees

Mr. MITIC (Yugoslavia) said that murders, rapes and other violent acts against civilians had been committed by paramilitary troops. The Government had created a special committee to investigate those violent acts. The courts and the special committee were joined by other institutions in the attempt to investigate and prevent such crimes. Unfortunately, for many citizens such actions were too late.

JANOS FODOR, expert from Hungary, inquired about data on the number of deaths during the armed conflict. What were the current powers of the enforcement agencies? What was the limit to detention? Was a warrent required for arrest?

Mr. ANDO, expert from Japan, referred to the mention in the report about the strengthening of the judiciary. Had there been concrete efforts by the Government to restore the judiciary at the end of the current crisis?

KURT HERNDL, expert from Austria, questioned the lack of information about implementation of specific rights of life, liberty and security of persons. He also wanted to know what measures had been taken to prevent the army from violating the rights enumerated in the Covenant.

Mr. AGUILAR URBINA, expert from Costa Rica, said he was concerned about reported violations of articles of the Covenant by the army. He asked what was being done to prevent violations in the areas controlled by the Government and what specific circumstances had prompted the authorities to refer to a need to limit the practice of capital punishment.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1146th Meeting (AM)

HR/CT/192
9 April 1992

YUGOSLAVIA DENIES ARMY GUILTY OF ATROCITIES AND SAYS REPORTED ATTACKS ON TWO TOWNS IN BOSNIA-HERZEGOVINA NEVER TOOK PLACE

Yugoslavia this morning insisted that the Yugoslav army had not been guilty of summary executions and other atrocities, and denied that the army had bombed two towns in Bosnia-Herzegovina, as reported in The New York Times of today. The statements were made to the Human Rights Committee during its ongoing consideration of Yugoslavia's report on its compliance with the International Covenant on Civil and Political Rights.

The Government would investigate all cases of atrocities mentioned in the report of Amnesty International, the Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia went on to say, adding that while individual units might have been involved, the army as a whole had not been. Yugoslavia had no wish to avoid its responsibility to control the army and had tried to prevent all possible acts of human rights abuse by its units.

He also said that inter-ethnic relations were not completely normal at the moment, but there was no basis for claiming that the Hungarian minority in Vojvodina was discriminated against.

The experts from France, Jordan, Austria, Sweden, Hungary and the Russian Federation urged the Government to deal with the "precarious situation" of the Albanian population in Kosovo, as well as to restore the property of refugees who had fled armed conflicts.

When it meets again at 3 p.m. today, the Committee will continue with its consideration of the Yugoslav report.

(more)

For information media—not an official record

Committee Work Programme

The Human Rights Committee met this morning to continue consideration of Yugoslavia's third periodic report on its implementation of the International Covenant on Civil and Political Rights. The Committee will examine issues concerning freedom of movement, assembly and expression, the right to privacy, rights of minorities and gender equality.

Right to Life, Treatment of Detainees

MIODRAG MITIC, Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia, responding to earlier questions from Committee experts, said the Yugoslav army had not been guilty of summary executions. Individual units might have been involved, but not the army as a whole. Statistical information on such individual atrocities and executions was not available.

He said the Slovenian provision on the death penalty was not in harmony with similar provisions in federal law. There had been two attempts to limit the use of the death penalty in federal law. The first had limited the death penalty to situations involving a state of war. The second, dealing with a required unanimous vote of judges, had not become law due to the current paralysis of Parliament.

In the new republic of Serbia, the new Constitution limited the length of pre-trial detention, he said. The initial detention could not exceed three months and could only be extended for a second period of three months by action of the Supreme Court. If no charges had been filed in that time, the accused had to be released.

In the periodic report, the Ministry for Foreign Affairs had referred only to articles concerning the justice system. It had not described implementation of other related rights and freedoms, he went on to say. The independence of the judiciary had been strengthened. Judges were elected to permanent positions and therefore do not have to stand for re-election. They were elected by the parliaments of the republics.

The Government had no wish to avoid its responsibility to control the army, he said. It had tried to prevent all possible acts of human rights abuse by army units. The committee for investigation of crimes of genocide and crimes against humanitarian law was attempting to bring to justice persons responsible for such crimes. Other competent Government bodies were involved in the investigation of army responsibilities for violations. Such actions could obviously not undo the crimes of the past, but they should help to protect human rights in the future.

CHRISTINE CHANET, expert from France, said there had been atrocities committed by the army and paramilitary groups in the current crisis. Why were there so few cases being prosecuted for the crimes that had been reported? She asked about the poor treatment of a number of prisoners as reported by Amnesty International and what action had been taken to remedy that situation.

(more)

Mr. MITIC (Yugoslavia) said national legislation prohibited torture and abusive treatment. Paramilitary units had been primarily responsible for the atrocities committed during the crisis. The army had not ordered such crimes against civilians. Individual members of the army had been involved, and those individuals were being sought out and prosecuted. Propaganda had labelled the Yugoslav army as guilty of all the atrocities. The reports of international organizations and not the accusations of various sides in the conflict should be relied upon for the truth.

WALEED SADI, expert from Jordan, referring to documented cases by Amnesty International, asked how could the truth of atrocities be ascertained. Could the cases documented by that organization be investigated and either proved or refuted by the Government?

Mr. MITIC (Yugoslavia) said there were instances where certain countries in the European Community (EEC) were partial. It was impossible to rely on the accuracy of all reports by so many different organizations. However, he did not reject the report of Amnesty International as biased and false. The Government would investigate all the cases mentioned in that report, because it had no interest in protecting those individuals who committed crimes against humanity.

He referred to cases of torture in Kosovo that had been documented a few years earlier to prove the Government's desire to prosecute cases of human rights violations. The persons responsible had been brought to trial and punished.

Freedom of Movement, Non-discrimination, Minorities' Rights

Mr. MITIC (Yugoslavia), responding further to written questions posed earlier by experts, said that officially there were no restrictions at all on the exercise of freedom of movement, the right to privacy, freedom of religion, expression, assembly and association. Any actual limitations were the consequence only of abuse of legislative provisions by members of the military and paramilitary forces, or persons acting individually.

He said almost all the Yugoslav republics had improved their legislation with regard to those rights. Other problems arose, however, from the present situation in Yugoslavia: those of new borders and divisions of the country, and of new restrictions on movement relating to the creation of new independent states.

The right to privacy was provided in accordance with existing European standards, he continued. That applied to correspondence and to secrecy of data; searches deemed necessary to apprehend criminals or to save human lives and property had to be carried out in the presence of two witnesses.

There were liberal provisions for freedom of religion in the Constitutions of the republics, he went on, although not in the Federal Constitution. There were three main religious communities -- Orthodox,

Catholic and Muslim -- with many other smaller groups, especially in the province of Vojvodina, and there were problems of intolerance among the members of the different groups.

Regarding freedom of association and the right to participate in the conduct of public affairs, he stated that all the republics had passed new legislative provisions that were fully in accordance with European standards; there were no special limitations on assembly or association. There were, however, some limitations in Kosovo. The majority of the Albanian population did not participate at present in public affairs, but that was because they boycotted the elections. They had some deputies in the parliaments of Serbia and Macedonia, as well as in the Federal Parliament. The parliament of Kosovo had none the less been suspended.

To a question about controls exercised on freedom of the press and the mass media, including possible censorship, he said there were no such controls; freedom was guaranteed under the Constitution. There were, however, problems with public information media financed by the State. They had a monopoly, and ruling parties in different republics used them to make propaganda. Editorial boards in some cases were elected by Parliament, although some parties strongly objected to the partiality of those media. There was also a problem with the State-financed television station and newspaper in Kosovo.

In recent years, he said, there had been no new positive developments in legislation pertaining to ethnic, religious and linguistic minorities.

KURT HERNDL, expert from Austria, referring to complaints against Yugoslavia by the International Labour Organisation (ILO) in the matter of an Albanian union demanding recognition in Kosovo, said workers had been dismissed for reportedly refusing to join a Serbian trade union. There had also been complaints about employment discrimination against Albanians in Kosovo.

Yugoslavia had been active internationally in supporting the rights of minorities, he said. Regrettably, however, in Kosovo the Government seemed to be violating minority rights, particularly of the Albanian minority. The legislative institution in Kosovo had been suspended. Schools had been shut down. Certain administrative steps had been taken against Albanian interests. The situation of the Albanian minority was precarious. What was being done to remedy the situation and accommodate the Albanian minority in Yugoslav territory?

Mr. SADI, expert from Jordan, asked what problems existed among Croatian, Serbian, and Muslim nations -- as they had been designated in the Constitution. Were those problems of ethnic or religious conflict? What affirmative policies had the Government adopted to reduce religious and ethnic intolerance.

Ms. CHANET, expert from France, asked what were the legal requirements governing the granting of passports. Must a person receive an exit visa, an

invitation from abroad or gain police approval? What were the conditions for leaving Serbia in particular?

JANOS FODOR, expert from Hungary, said Serbian officials in occupied areas had seized the property of persons who had fled during the conflict. What was being done to protect the property of the rightful owners?

He asked what policy the Government was pursuing for the return of refugees from abroad. Was the Government facilitating their return? Also, what measures were being taken to protect children in areas of military conflict? And it had been reported that conscription of minorities into the army had been excessive. What measures were being taken to remedy that situation?

Limitations had been placed on the teaching of languages of minorities in certain areas, he went on to say. What did the Government intend by implementing those limitations?. What was the intent of the Serbian authorities in limiting minority rights?

REIN AVOVICH MULLERSON, expert from the Russian Federation, said the right to self-determination in international law did not necessarily include the right to secession.

He asked about the report that the army had ordered bombings on Croatian towns in Bosnia-Herzegovina in retaliation for Croatian paramilitary attacks. Such attacks, he said, were contrary to international law and generated a cycle of violence that was difficult to break.

BERTIL WENNERGREN, expert from Sweden, said that a report indicated that drug trafficking centres had been established in Yugoslavia. Drug money was being used to buy arms. If that report was true, what measures had the Government taken against the drug trafficking?

Mr. MITIC (Yugoslavia) said the complaint by ILO against Yugoslavia would be resolved. In federal and republican law there was protection of trade unions. Concerning the situation in Kosovo, the Albanian trade union had begun dialogue with the government of Serbia. The problem of the dismissal of Albanian workers was being confronted on an individual basis. Many Albanians had not used available court procedures to fight dismissals. It was difficult to deal with the issue by seeking a package solution.

He said the problem in Kosovo was the unwillingness of the Albanian minority to accept the authority of the State. It was not simply an issue of denying a minority its rights. The attempt by Kosovo to declare itself an independent republic could not be recognized, as Kosovo was a part of Serbia. The Government had no wish to deny the rights of the Albanian minority. The issue of self-determination in Kosovo was the basis for the solution of all the other issues. There had been an attempt to negotiate with the minority over the problems of employment and schools. The Albanian minority had

objected to learning Serbian, the official majority language of the country. That objection had no basis in international guidelines for the teaching of the majority language.

No attempt had been made to change names and traditions of the Albanian population in Kosovo, he said. In the current climate of inter-ethnic hatred, some abuses had unquestionably occurred. The Albanian minority have refused to negotiate solutions to current problems with the Government without the full recognition of Kosovo as an independent state. The Serbian government was not ready to accept such a condition.

He said the reference to Muslims in the Constitution was as a nation not as a religion. They were considered to be one nation among six recognized in the Constitution of Yugoslavia.

As the inter-ethnic situation deteriorated, he said, the Government had attempted to protect the rights of religious groups. Conflicts between national groups were often connected with religious intolerance. No distinction had been made among religious groups in the granting of rights. Larger religious institutions obviously had greater influence in the society as a whole.

In past years, drastic criminal sentences had been handed down for crimes of racial and religious hatred, he said. Although Yugoslavia had been criticized for the severity of those sentences, the current situation seemed to support the wisdom of those former judicial actions.

He said no special obstacles existed in obtaining a passport. A passport could be refused for reasons common in the international community.

Regarding the problem of refugees, he said many people had fled the armed conflicts. The Government was encouraging all the refugees to return. In some villages, many houses had been destroyed, and it was impossible for all the refugees to return to their homes. A problem existed with the people who had fled from military duty. In the country's Assembly a discussion was under way on whether to enforce the laws of military service or to pardon the offenders. No one had been imprisoned for avoiding service, only fines had been levied.

Efforts had been made to protect children in the armed conflict, he said. Many children, none the less, had suffered. A significant percentage of refugees were children. Also, he went on to deny a report that a disproportionate number of persons of minority origin had been conscripted into military service during the current conflict.

Reports of discrimination against the Hungarian population in Vojvodina were unfounded, he said. Certain representatives of the minority had exaggerated the situation. All minority groups had suffered to some degree in the current crisis. Serbian authorities had not in fact attempted to limit the rights of minorities. But at present, inter-ethnic relations in Yugoslavia were not completely normal.

(more)

He said the recent report of air attacks in Bosnia-Herzegovina had been denied by the Government authorities.

As to reports of drug trafficking and arms, he said those were related primarily to two republics. Authorities were trying to combat the problem, but most of those situations had occurred outside areas controlled by the Government.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1147th Meeting (PM)

HR/CT/193
9 April 1992

HUMAN RIGHTS COMMITTEE CONCLUDES EXAMINATION OF YUGOSLAVIA'S REPORT

Agrees on Texts on Reports of Algeria, Colombia

The Human Rights Committee this afternoon concluded its examination of the report of Yugoslavia, with members urging that although the central Government no longer had control over the entire territory, the International Covenant on Civil and Political Rights should be applied even in those republics that had seceded.

In their concluding observations, the experts from Jordan, Egypt, Hungary, Ecuador, Japan, the Russian Federation, Austria, Sweden, France and Italy said that as the current violence endlessly repeated itself, it would create more difficulties for refugees and minorities in neighbouring countries. They expressed concern about the situation of Muslims in Bosnia-Herzegovina and pointed out that it was only when the Government had used force that the European Economic Community (EEC) had begun to recognize the secessionist republics.

The representative of the Yugoslav Government said there was no doubt as to its responsibility for the acts of violence, regardless of which individuals or institutions had committed them.

Also this afternoon, the Committee agreed on texts summarizing its discussion on the reports of Algeria and Colombia, which it had taken up earlier in the session. The comments, as orally amended, highlight the positive aspects of recent actions to implement the Covenant, as well as factors and difficulties impeding its application. They also describe the Committee's principal subjects of concern and set forth its suggestions and recommendations.

The 18-member Committee began its current session on 23 March. The experts serve in their individual capacity and are charged with monitoring implementation of the Covenant by States parties.

When it meets again at 10 a.m. tomorrow, 10 April, the Committee will deal with its methods of work and will conclude its current session.

(more)

For information media—not an official record

Committee Work Programme

The Human Rights Committee met this afternoon to conclude its consideration of Yugoslavia's third periodic report on its implementation of the International Covenant on Civil and Political Rights.

Conclusions by Experts

WALEED SADI, expert from Jordan, said two issues were still unclear -- the question of self-determination and the excesses of military forces. The right to self-determination should not be pursued over the barrel of a gun. And it should not be pursued if it meant the dismemberment of an individual member State. Would the Government oppose self-determination if it were pursued by the various parties within the constitutional framework?

The Government had admitted that atrocities had been committed, he said. Although the Government had not acknowledged the truth of all the allegations, would it commit itself to investigating and reporting on all the allegations?

OMRAN EL SHAFEI, expert from Egypt, said that although the situation in Yugoslavia was complex, the Committee's request for a report during the crisis was justified. The lack of guarantees during the crisis for a number of basic human rights was of serious concern. Prior to the crisis, the Government had been attempting to institute a series of constitutional reforms.

He pointed out that as the current violence endlessly repeated itself, it would create more refugee and minority rights difficulties for the neighbouring countries.

JANOS FODOR, expert from Hungary, said the State party Government was not in a position to implement the Covenant in all of the Yugoslav territory. During the armed conflict, gross violations of the rights protected by the Covenant had been committed there. The Federal Government had lost control, not only over a considerable part of the country, but also over the Federal army which should be held responsible for a great many violations.

He said not all the violations could be attributed to the armed conflict; many were not related to the fighting. In Kosovo, for example, repressive measures against the majority Albanian population were still going on. The Serbian authorities should not minimize the danger of a new armed conflict within the borders of the republic. The situation in Bosnia-Herzegovina was extremely dangerous as well.

Some positive elements were the establishment of a commission to investigate flagrant violations and the drafting of a new Constitution, he continued. However, the Serbian republic seemed to be impatient with minorities. The once-sensitive Yugoslav policy on minority issues was being transformed into a more severe ethnic policy, perhaps the consequence of rising nationalism, secessionism and armed conflicts.

(more)

The autonomous status of certain provinces, he went on, had gradually been diminished, and there was a risk that the new Constitution would entirely disregard the matter. Restrictions on the use of minority languages were also increasing.

JULIO PRADO VALLEJO, expert from Ecuador, said the principle of self-determination had really been endangered, and many of the other rights and principles in the Covenant depended on that right. Many abuses appeared to have been committed by the Serbian army. Investigations had not yet begun, but all the effort seemed to be put into explaining what had happened rather than doing something about it.

NISUKE ANDO, expert from Japan, said the Committee should keep in mind the day-to-day events as they evolved in Yugoslavia. The Government had submitted a report under extremely difficult circumstances. He expressed continued concern about the situation of Muslims in Bosnia-Herzegovina. More could be done, also, to guarantee the independence of the judiciary. The lack of information in the report on the period from 1983 to 1988 was regrettable. In spite of the current limitations of Government authority, it should maintain all efforts to guard the rights of citizens over which it did have authority.

REIN AVOVICH MULLERSON, expert from the Russian Federation, said that other regions of the world had experienced similar ethnic conflicts. All sides usually shared the blame for violations of rights. The Government had to accept the blame for using force against secessionist republics. Although there was no right of secession guaranteed in international law, no law allowed the use of force against secessionist groups. Only when the Government used military force did the member States in the European Community begin to recognize the republics.

Minorities had no internationally guaranteed right to self-determination, he said. The rights of minorities had to be protected through negotiations to resolve problems as they arose.

KURT HERNDL, expert from Austria, said the central Government must at the very least remain responsible for its organs, including the military, the police and other forces. It was essential to recognize the rights of minorities. The situation should be resolved in the near future so as to have clear lines of responsibility among local authorities, new emerging States and the Government at Belgrade.

BERTIL WENNERGREN, expert from Sweden, said it was impossible to assess the situation accurately, but expressed satisfaction at the drafting of a new Constitution and the appointment of a federal commission to investigate human rights violations.

It was up to the courts in the seceded republics to protect individuals in accordance with the Covenant, he continued. Even though they were not parties to it, it should be applied in their territories because it was part of Federal law.

(more)

CHRISTINE CHANET, expert from France, said that one primary obstacle to implementation of the Covenant was the Government's loss of control over a large part of the territory. Regrettably, the right of secession, contained in the Constitution, could not be implemented peacefully.

She regretted the Government's rejection of the accuracy of a series of reports on atrocities. It would have been more satisfactory to investigate all allegations fully. Pointing out the abuses committed by the army was not intended to demonstrate a lack of respect for the Government. It was up to the State to regulate the use of force to prevent abuses of human rights. It would also be desirable for the Governemnt to improve the situation of certain minorities.

The Chairman, FAUSTO POCAR, expert from Italy, said that notwithstanding the difficult situation in Yugoslavia where the Government had lost control over a large part of its territory, the Committee had received a clearer picture of the crisis in the country. He expressed doubts that the protection of human rights was the highest priority of the Government during the recent armed conflict. The country's fourth periodic report would be due on 3 August 1993.

Statement by Yugoslavia

MIODRAG MITIC, Adviser to the Federal Secretary for Foreign Affairs of Yugoslavia, said all the Committee's comments and suggestions would be duly transmitted to his Government and the competent authorities. The Government was ready to abide by all provisions of international law, including those of the Covenant. It would do its best to implement the provisions of the Covenant and to investigate all cases of excesses committed by military units, including the Yugoslav army.

He said it was in the Government's own interest to investigate every crime, to prevent further crimes and to identify and punish all those responsible. There was no doubt as to the Government's responsibility for all those acts, regardless of which individuals or institutions had committed them.

The Government did not, he went on, deny the right to self-determination of the Yugoslav nations. It was only a question of the peaceful and constitutional solution of all problems arising from the secession, and nothing more, and of the violent acts committed by some of the secessionist republics which had led to armed conflict.

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United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Human Rights Committee
Forty-fourth Session
1148th Meeting (AM)

HR/CT/194
10 April 1992

HUMAN RIGHTS COMMITTEE CONCLUDES SESSION

Asks Peru to Submit Additional Report on Recent Events

Concluding its forty-fourth session this morning, the Human Rights Committee, decided to request Peru to report back to it on recent events affecting human rights.

It took that action by asking for a report on events that had taken place since the Committee's examination of Peru's second periodic report during its present session, which began on 23 March. The additional information was to include responses to a number of questions raised by Committee members.

The Committee also decided that at its next session, which would be held in July, it will consider the third periodic report of Belarus, the third periodic report of Mongolia, the first periodic report of the Republic of Korea and the first periodic report of Burundi.

In other matters, the Committee agreed on the wording of summaries of its discussion of the reports of Yugoslavia and Belgium and decided to accept Germany's request to submit its fourth periodic report as scheduled in August 1993.

The Committee agreed on the membership and mandates of two working groups scheduled to meet prior to its next session. The Working Group on Communications will comprise: Birame Ndiaye, expert from Senegal; Janos Fodor, expert from Hungary; Andreas V. Mavrommatis, expert from Cyprus; Waleed Sadi, expert from Jordan; and Julio Prado Vallejo, expert from Ecuador. The Working Group on article 40 of the Covenant, dealing with reports by Governments, will comprise: Francisco Jose Aguilar Urbina, expert from Costa Rica; Nisuke Ando, expert from Japan; Vojin Dimitrijevic, expert from Yugoslavia; and Fausto Pocar, expert from Italy.

In closing remarks, the Chairman noted the improvement in the working methods of the Committee with the adoption of concluding comments on the periodic reports of States parties.

The Committee will hold its forty-fifth session in Geneva from 13 to 31 July.

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For information media—not an official record

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Round-up of Session

HR/CT/195
13 April 1992

FORTY-FOURTH SESSION OF HUMAN RIGHTS COMMITTEE

NEW YORK, 23 MARCH - 10 APRIL

Comments on Reports of Algeria, Belgium, Colombia, Yugoslavia, Clarifies Rights of Detained Juveniles, Standards for Torture Cases

The suspension of the democratic process in Algeria, institutionalized violence in Peru and the impunity of the military and drug traffickers in Colombia were among the concerns stressed by members of the Human Rights Committee during that body's forty-fourth session, which concluded Friday, 10 April, at Headquarters.

The Committee, which examined periodic reports by five countries on their compliance with the International Covenant on Civil and Political Rights, also expressed its concern about discrimination against immigrants in Belgium. Regarding Yugoslavia, it focused on human rights violations by the Army, which the Federal Government no longer controlled, as well as inter-ethnic conflicts and the treatment of minorities.

In other action during its three-week meeting, which began on 23 March, the Committee decided to request Peru to report back to it on recent events affecting human rights.

The Committee, which monitors implementation of the Covenant by its 104 State parties, is composed of 18 experts who serve in their invididual capacities.

The Committee decided that at its next session, which is to be held in Geneva from 13 to 31 July, it will consider the following reports: the third periodic report of Belarus; the third periodic report of Mongolia; the second periodic report of Afghanistan; the first periodic report of the Republic of Korea; and the first periodic report of Burundi. It will also resume consideration of Peru's second periodic report. In addition, it decided to accept Germany's request to submit its fourth periodic report as scheduled in August 1993.

(more)

For information media—not an official record

During the course of the session, the Committee adopted revised general comments on two articles of the Covenant. The general comment on article 10 -- which deals with the treatment of prisoners -- elaborates on States parties' obligations towards accused juvenile persons and juvenile offenders, including the supervision of places of detention and the training of supervisory personnel. The need to segregate accused persons from convicts, and accused juveniles and juvenile offenders from adults, is clarified in the text.

In its discussion of the revised general comment on article 7, on torture and degrading treatment, the Committee focused on language concerning detention and amnesty for acts of torture.

General comments are intended to clarify and interpret provisions of the Covenant in order to assist States parties in preparing their reports.

In addition, the Committee studied confidential communications from nine individuals claiming to be the victims of violations of any of the rights set forth in that treaty. The Committee last met in November 1991.

The Committee agreed on the membership and mandates of two working groups scheduled to meet prior to its next session. The Working Group on Communications will comprise: Birame Ndiaye, expert from Senegal; Janos Fodor, expert from Hungary; Andreas V. Mavrommatis, expert from Cyprus; Waleed Sadi, expert from Jordan; and Julio Prado Vallejo, expert from Ecuador. The Working Group on article 40 of the Covenant, dealing with reports by Governments, will comprise: Francisco Jose Aguilar Urbina, expert from Costa Rica; Nisuke Ando, expert from Japan; Vojin Dimitrijevic, expert from Yugoslavia; and Fausto Pocar, expert from Italy.

For the first time, the Committee adopted comments on the periodic reports considered during the session. These concerned Algeria, Colombia, Belgium and Yugoslavia, since consideration of the report of Peru will be continued at the Committee's next session.

The comments highlight the positive aspects of recent actions to implement the Covenant, as well as factors and difficulties impeding its application. They also describe the Committee's principal subjects of concern and specific actions to be taken by the State party to ensure that its citizens enjoy the rights and freedoms guaranteed by the Covenant.

Algeria

The Committee's discussion of Algeria's initial report had centred on the political situation in that country since the cancellation of elections last January, with experts questioning the fact that an Islamic political movement was considered a threat to a democracy in which Islam was the State religion. Several members felt that the ruling party had abused the democratic process in order to stay in power. They wondered how the Government reconciled its statement of equality of the sexes with Algeria's patriarchal culture and traditional Muslim social norms, such as dowries and polygamy.

(more)

In its comment on the report, the Committee regrets that the report includes little information concerning the actual application of human rights standards and that it makes no reference to the states of emergency. It expresses concern about the suspension of the democratic process, the high number of arrests and the excessive use of firearms by members of the police. It expresses doubts about respect for due process, especially before military tribunals, about the numerous cases of torture and ill-treatment and about restrictions on freedom of opinion and expression and press freedom.

The Committee also regrets the many cases of discrimination against women and considers that measures to assist minorities, especially the Berbers, are insufficient. It reminds the State party that the Covenant does not permit derogation from certain rights even in times of emergency.

Responding to the issues raised by the Committee, the representative of the Government of Algeria had said it was anxious to restore the democratic process as soon as possible, but that imposition of a state of emergency had been unavoidable. Since the adoption of the new Constitution, the transition to democracy had been too hasty and Government action had been necessary to respond to a substantial threat to that democratic process. The representative also stated that restrictions on political associations whose values were contrary to those of Islam, and the fact that Algeria had a State religion, were not incompatible with the Covenant.

Peru

In their discussion of the second periodic report of Peru, Committee members had focused on the "institutionalization of violence" in that country, and the related gap between theory and practice in respecting human rights there. While acknowledging the difficulties faced by the Government in implementing the Covenant as a result of terrorist and drug trafficking activities, the Committee was concerned by the thousands of cases of disappearances, rape, torture, killings and other forms of violence, and with what it called the "extensive" derogations from the rights enshrined in the Covenant.

The Committee was also concerned about how the successive states of emergency affected the human rights situation; about exoneration of the military from responsibility for acts committed under orders; and about the courts' inability to enforce their jurisdiction over emergency zones. The independence of the judiciary, and the extent to which provisions of the Covenant on non-discrimination, equality of the sexes and minority rights were respected, were also stressed.

In its replies to the Committee, the Government of Peru had said that while it was not denying mistakes could be and were being made, it was faced with an unconventional enemy -- the Sendero Luminoso (the Shining Path). The so-called "terrorism from above" must be placed in the context of "terrorism from below". The "imminent danger of war" was sufficient reason for imposing a state of siege.

The Government had admitted that terrorist violence was no excuse for excesses by the security forces in defending the people and institutions. While there had been some "unfortunate" situations, a new judicial system had emerged to prevent their recurrence.

Following the debate, the Committee had asked Peru to provide supplementary information which would be reviewed at the next session.

Colombia

The Committee, in its debate on the third periodic report of Colombia, had praised that country for many of its efforts but had urged it to put an end to impunity, which the Government itself admitted was still Colombia's main problem. The absence of investigations of sometimes grave crimes, the failure of the judicial system to function with real effect and the inability of the civilian Government to take appropriate action to end the situation had all been discussed by the Committee.

In its comments, the Committee notes with satisfaction the constitutional reform in Colombia and other reforms important for the strengthening of human rights, particularly the establishment in 1987 of the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the establishment of a National Human Rights Unit in the Directorate General of Criminal Investigation.

It further notes that not all obstacles to the full application of the Covenant have been removed, and expresses concern about the unacceptable rate of homicides, disappearances and torture. Of special concern are the murders of sectors of the population in so-called "clean-up" operations, the phenomenon of impunity for police and military personnel, the use of military courts to try civilians and the persistence of paramilitary groups. Likewise, the Committee is concerned that the principle of equal pay for men and women has not yet been fully applied, and feels that the country's child labour situation violates the Covenant.

The Committee recommends that the State party intensify its action against all violence resulting in human rights violations, eliminate impunity, limit the competence of the military courts and disband all military groups.

The Government, elaborating on the "substantial changes" that had taken place in Colombia over the past two years, had said that the reforms had been accompanied by relatively endemic and grave violence on the part of guerrilla groups, paramilitary "self-defence" groups and drug traffickers. Although that violence continued, reports of torture, disappearances and mass murders had declined considerably; the Government was following up on complaints of violations, was dealing with acts of violence against families and children, negotiating with guerrilla groups and investigating cases of murder or torture involving the police and military.

Belgium

The existence of discrimination on the basis of nationality had been stressed by the Committee in its discussion of the second periodic report of Belgium, whose representative had explained that foreigners could be excluded from residing in certain Belgian communes because a concentration of them could promote racist reactions. According to the relevant decree, certain categories could be excluded if a population increase would jeopardize the public interest.

In its comment, the Committee expresses concern about the difference between civil rights enjoyed by citizens and those enjoyed by aliens, which may lead to discrimination. Other areas of concern include the adequacy of monitoring pre-trial detention, the impartiality of the authorities who examine those arrested, the inadequacy of information on freedom of expression and arrangements as to freedom of assembly in open air.

Among the Committee's recommendations are that the State party more adequately reflect provisions of the Covenant which are not reflected in the European Convention on Human Rights, and that it further improve the effectiveness of the protection granted to minority rights at the communal level. The State party should also reconsider its reservations to provisions of the Covenant in order to withdraw as many as possible.

Yugoslavia

The right to self-determination of the peoples of Yugoslavia, and human rights violations being carried out by the Federal army in the name of restoring constitutional authority, headed the list of the Committee's preoccupations with regard to the present crisis in that country.

The Government had asserted that it recognized the rights to self-determination and secession, but only according to constitutional law. It felt that Yugoslavia's own right to self-determination -- which included respect for territorial integrity and non-interference in internal affairs -- had not been respected by some members of the international community. Experts pointed out, however, that it was only when the Government had used force that the European Economic Community had begun to recognize the secessionist republics.

The Government said there was no doubt as to its responsibility for the acts of violence, regardless of which individuals or institutions had committed them. It none the less insisted that since the Federation was in a state of disintegration, it could not bear the sole blame for the destruction of towns and villages or for summary executions and other atrocities. It did, however, promise to investigate all such cases.

The Committee, in its comments on the third periodic report of Yugoslavia, states that the current crisis does not permit the State party to supervise implementation of the Covenant throughout the territory, but welcomes Yugoslavia's creation of a committee for investigation of genocide

and violations of humanitarian law. The Committee further emphasizes the urgency of a continuing implementation of the Covenant in the breakaway republics.

The Committee regrets that the right to secession recognized in the Federal Constitution has not been implemented in domestic law, which would have enabled the peaceful settlement of the crisis. It equally regrets that within the framework of the state of emergency in Kosovo, excessive measures have been taken that limit the rights and freedoms guaranteed by the Covenant.

The Committee's deepest concern is reserved for the atrocities committed during the inter-ethnic conflicts; it particularly deplores the numerous cases of summary or arbitrary executions, forced or involuntary disappearances, torture, rape and pillage committed by members of the Federal Army or paramilitary groups. It also deplores the extremely low number of investigations into those violations, the failure to punish the guilty and the impunity enjoyed by the perpetrators.

The Committee is additionally concerned with the deteriorating situation of ethnic, religious and linguistic minorities, particularly those of Albanian and Hungarian origin. It recommends that the Government take all necessary action to bring an end to the violations, by restoring control over the Army, disbanding the paramilitary groups, punishing the guilty and preventing the recurrence of such acts.

Background on Covenant

The Covenant was adopted by the General Assembly and opened for signature in 1966, together with the International Covenant on Economic, Social and Cultural Rights, both of which entered into force in 1976.

The Covenant begins by stating that all peoples have the right of self-determination. It guarantees to everyone the right to life, liberty and security of person. It prohibits torture, cruel or degrading treatment or punishment, and the arbitrary deprivation of life. Anyone arrested has the right to be informed of the reasons for the arrest, and anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other legally authorized person.

The Covenant also provides for freedom of movement and places limitations upon the expulsion of aliens from the territory of a State party. In addition, the right to freedom of thought, conscience, religion and expression are recognized, and the Covenant provides for the prohibition of war propaganda and advocacy of national, racial or religious hatred.

The following 104 States have ratified or acceded to the Covenant: Afghanistan, Albania, Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial

Guinea, Estonia, Finland, France, Gabon, Gambia, Germany, Grenada, Guinea, Guyana, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syria, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

First Optional Protocol

The first Optional Protocol to the Covenant provides for the confidential consideration of communications from individuals who claim to be victims of a violation of any of the rights proclaimed in the Covenant. No communication can be received by the Committee if it concerns a State party to the Covenant that is not also a party to the first Optional Protocol.

The following 63 States are parties to the first Optional Protocol: Algeria, Angola, Argentina, Australia, Austria, Barbados, Benin, Bolivia, Cameroon, Canada, Central African Republic, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Equatorial Guinea, Estonia, Finland, France, Gambia, Hungary, Iceland, Ireland, Italy, Jamaica, Libya, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mongolia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Spain, Suriname, Sweden, Togo, Trinidad and Tobago, Ukraine, Uruguay, Venezuela, Zaire and Zambia.

The Committee is also mandated under Article 41 of the Covenant to consider communications from a State party alleging violations of the Covenant's provisions by another State party. This procedure can be applied when both States have made declarations recognizing the Committee's competence to consider such communications. So far, the following 33 States have done so: Algeria, Argentina, Austria, Belgium, Canada, Chile, Congo, Czechoslovakia, Denmark, Ecuador, Finland, Gambia, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Republic of Korea, Senegal, Russian Federation, Spain, Sri Lanka, Sweden, United Kingdom and Zimbabwe.

Second Optional Protocol

The second Optional Protocol, aiming at the abolition of the death penalty, entered into force on 11 July 1991. Nine States have ratified or acceded to it as of 1 August 1991: Australia, Finland, Iceland, Netherlands, New Zealand, Portugal, Romania, Spain and Sweden.

(more)

Committee Officers, Membership

The Committee's members are elected by the States parties to the Covenant for a term of four years. According to article 28 of the Covenant, "they shall be persons of high moral character and recognized competence in the field of human rights". The Chairman of the Committee is Fausto Pocar, expert from Italy. Its Vice-Chairmen are Francisco Jose Aguilar Urbina, expert from Costa Rica; Vojin Dimitrijevic, expert from Yugoslavia; and Omran El Shafei, expert from Egypt. The Rapporteur is Nisuke Ando, expert from Japan.

The other members are: Christine Chanet, expert from France; Janos Fodor, expert from Hungary; Kurt Herndl, expert from Austria; Rosalyn Higgins, expert from the United Kingdom; Rajsoomer Lallah, expert from Mauritius; Andreas V. Mavrommatis, expert from Cyprus; Rein A. Müllerson, expert from the Russian Federation; Birame Ndiaye, expert from Senegal; Julio Prado Vallejo, expert from Ecuador; Waleed Sadi, expert from Jordan; Alejandro Serrano Caldera, expert from Nicaragua; Amos Wako, expert from Kenya; and Bertil Wennergren, expert from Sweden.

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